IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

State of Rajasthan
Vs.
Judge, Labour Court & Anr.

S.B. CIVIL WRIT PETITION NO.4018/1997
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 05th September, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Rameshwar Dave, Dy.Govt. Advocate for the petitioner.
Mr.Girish Shankhla, Advocate for the respondents.

BY THE COURT

The State of Rajasthan in the present proceedings has challenged the award dated 14.12.1996 passed by the Industrial Tribunal-cum-Labour Court, Jodhpur. The appropriate Government by its order dated 09th August, 1992 made a reference to the said court on an industrial dispute whether removal of the workman from service by Divisional Forest

Officer, Abu Road was legal and justified and if not, what relief the workman is entitled to. The labour court in the impugned award held the removal of the petitioner as illegal and therefore directed his reinstatement along with 50% back wages.

I have heard Mr.Rameshwar Dave, learned Dy. Government Advocate for the petitioner and Mr.Girish Sankhla, learned counsel for the petitioner and perused the record.

Mr.Rameshwar Dave, learned Dy. Government Advocate in assailing the validity of the impugned award has argued that the respondent workman was engaged in National Rural Employment Programme (for short NREP) under the Jawahar Rozgar Yojna and he worked in piece meal works under the said scheme were exempted from the purview of Industrial Dispute Act, 1957. There was no finding recorded by the labour court with regard to violation of Section 25-F of the Industrial Disputes Act. He has relied on muster-rolls of the petitioner of the month May, 1989 to show that the petitioner worked under NREP Scheme. When the work could not be completed in the said scheme in the year 1989-90, rest of the work was done under Jawahar Rozgar Yojna. Alternatively, the learned Dy. Government Advocate argued that respondent-workman had in all worked for only 121 days in one Calendar year, there was thus no violation of Section

25-F of the Act. He also argued that the petitioner left the work at his own accord which is clear from his letter dated 06.02.1990 in which he admitted the reason for his absence that he had gone to Ahamedabad. He further argued that Satara Ram was engaged after his removal, thereafter violation of Section 25-H of the Act has been categorically denied by the management. The petitioner however failed to produce any evidence before the labour court to substantiate such allegations. When the petitioner had left the service on his own accord, there was no justification for including his name in the seniority list and therefore there was no violation of Rule 77 of the Industrial Disputes (Central) Rules.

On the other hand Shri Girish Sankhla, learned counsel for the respondents argued that when the petitioner reported on duty on 16th September, 1989, the Management declined to take him on duty and terminated his services by an oral order. Neither any notice was given to the petitioner under Section 25-F nor was he paid compensation in lieu thereof. The management newly employed one Satara Ram after the removal of the petitioner thus, violating Section 25-H of the Act. He has argued that according to Rule 77 of the Industrial Dispute (Central) Rules, it was obligatory for the management to prepare a seniority list of the workman in the particular category from

which retrenchment was contemplated and place the same on notice board in a conspicuous place at least seven days before the actual date of retrenchment. Since no such evidence was produced by the management, the labour court was justified in drawing an adverse inference against the management. He therefore argued that no case is made out for interference by this Court and therefore the writ petition is liable to be dismissed.

I have considered the arguments advanced by learned counsel for the parties and perused the records.

The admitted case of the petitioner is that he was engaged in the month of May, 1989 by an oral order of the petitioner on monthly wages of Rs.300/-. He thereafter worked with the management up to 15th September, 1989 and was not allowed to join when he reported back on duty on 01st May, 1989. The learned labour court has refused to accept the stand of the management on the ground that workman absented from duties on his own. It has been held that when the workman absented from duties, the management was required to serve a notice upon him and hold disciplinary proceedings after serving charge-sheet upon him. Since the management failed to take all these steps, the only inference that can be drawn is that he did not

absent from duties but his services were terminated. The learned labour court has also raised a presumption against the management for their inability to produce seniority list under Rule 77 (supra) and therefore directed reinstatement of the petitioner w.e.f. 09th August, 1992 with 50% back wages.

In the present case, when the respondent had worked with the management for a limited period of 121 days, it does not appeal to reason that if he absented from duties, the management would be required to conduct a full-fledged inquiry against him by serving a charge-sheet. The learned labour court was not justified in drawing an adverse inference against the management on account of non-holding of disciplinary proceedings. The respondent also failed to prove the violation of Section 25-G and 25-H by leading any evidence whatsoever.

In the facts of the present case, especially in view of two important factors, one that the working of the respondent was limited to only four months therefore there could be no question of violating Section 25-F of the Act and second that the workman failed to prove violation of Section 25-G and 25-H, reinstatement of the respondent with continuity and 50% back wages ought not to have been directed by the learned labour court. Findings recorded by the learned labour court as to requirement of

serving charge-sheet on the workman and holding disciplinary inquiry are therefore perverse amounting to error apparent on the face of record calling for interference by this Court. The award passed by the learned labour court is thus liable to be set aside.

As a result of aforesaid discussion, the writ petition is allowed and the award of the labour court is set aside. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-